

REMARKS

Status of the Claims

Claims 1-6 are pending in the application. Claim 1 has been amended to replace the phrase “consists essentially of” with “consists of” with reference to the composition of the nucleic acid probes of the array. Claim 5 has been amended to replace the phrase “consist essentially of” with “consist of” with respect to the probes on a bead. Applicants assert that no new matter is presented by these amendments and respectfully request entry of the same.

Rejections under 35 U.S.C. § 112 should be withdrawn.

In paragraph 5, claims 1-6 are rejected as failing to comply with the written description requirement. Applicants have amended claims 1 and 5 as suggested by the Examiner to recite “consist(s) of” instead of “consist(s) essentially of”. Applicants believe that in view of these amendments the rejection should be withdrawn.

Rejections under 35 U.S.C. § 103 should be withdrawn.

In paragraph 6, claims 1-6 are rejected over Unigene build 107 (June 2002) in view of Fodor et al., (US Pat 6,309,822). The Unigene database is cited as teaching the sequences of mouse genes and ESTs and, as indicated in the specification, the claimed probe sequences are complementary to genes and EST clusters from this build of the database. Fodor et al. is cited as teaching that arrays may comprise up to 1,000,000 different oligonucleotide probes that are preferably 20 to 25 nucleotides in length. Applicants argued in the previous response that the specific set of 982,914 twenty-five base probes claimed was not obvious in view of Unigene build 107 and Fodor et al. The Examiner did not find the arguments persuasive

because the claims were not limited to probes which consist of the specific 25 mer sequences of SEQ ID NOS 1-982,914. The Examiner indicates at the end of paragraph 7, that “the prior art does not provide motivation to arrive at a set which included probes which consist of the specific 25 mer sequences of each of SEQ ID NOS 1-982,914.” Applicants have amended the claims to clarify that probes consist of the specific 25 mers of SEQ ID NOS 1-982,914 and believe that in view of the amendments the rejection should be withdrawn.

In paragraph 8, claims 1-6 are rejected over Unigene build 74 in view of Fodor et al. (US Patent 6,309,822). As discussed above, the claims have been amended to clarify that the probes consist of the specific 25 mer sequences of SEQ ID NOS 1-982,914. Applicants believe that in view of the amendments the rejection should be withdrawn.

In paragraph 10, claims 1-6 are rejected over Marshall (Science, vol. 296, May 10, 2002; p. 1005) in view of Fodor. Marshall is cited as teaching the completion of 96% of the sequence of the mouse genome. As discussed above, the claims have been amended to clarify that the probes consist of the specific 25 mer sequences of SEQ ID NOS 1-982,914. Applicants believe that in view of the amendments the rejection should be withdrawn.

In paragraph 12, claims 1-6 are rejected over Marshall II (Marshall, Science, vol. 292, May 4, 2001; p.822) in view of Fodor. Marshall II is cited as teaching the completion of the draft of the sequence of the mouse genome. As discussed above, the claims have been amended to clarify that the probes consist of the specific 25 mer sequences recited in SEQ ID NOS 1-982,914. Applicants believe that in view of the amendments the rejection should be withdrawn.

CONCLUSION

For these reasons, Applicants believe all pending claims are now in condition for allowance. If the Examiner has any questions pertaining to this application or feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 731-5000.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.01-0431. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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